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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,056	09/22/2003	Sean McFerran	1001.1708101	7830
28075	7590	08/26/2005		
CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420			EXAMINER SIRMONS, KEVIN C	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/667,056

Applicant(s)

MCFERRAN, SEAN

Examiner

Kevin C. Simons

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4-13 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-13 and 15-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/11/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Alchas U.S. Pat. No. 5,030,210.

Alchas discloses a microcather comprising: an elongate shaft (30); a guidewire port (40); a control valve (34);

the device of Alchas is fully capable of performing the function as set forth in claim 1, as to claim 2, (34 and 38); as to claim 3, (figs. 7-10); as to claim 4 (the slit (42) is angled relative to the longitudinal axis); as to claim 6, the device of Alchas is capable of performing the function of claim 5); as to claims 10, 12, (figs. 7-10).

Claims 1-6, 10 and 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Friedman U.S. Pat. No. 1,719,428.

Friedman discloses a microcather comprising: an elongate shaft (1); a guidewire port (11); a control valve (8); the device of Friedman is fully capable of performing the function as set forth in claim 1, as to claim 2, (figs. 1-2); as to claim 3, (figs. 1-2); as to claims 4 and 5, (7 and 10); as to claim 6, the device of Friedman is capable of performing the function of claim 5); as to claims 10, 12 (figs. 1-2) as to claims 13-17, (see above rejections); as to claims 18-20, (figs. 1-7).

Claims 1, 6, 7, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Yurek et al U.S. Pat. No. 5,690,644.

Yurek discloses a microcather comprising: an elongate shaft (20); a guidewire port (52); a control valve 53); the device of Yurek is fully capable of performing the function as set forth in claim1; as to claims 6 and 7, (figs. 1-7); as to claims 10, 12, (fig. 1-7).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yurek et al and Friedman and Alchas.

The above-mentioned inventors disclose the microcatheter substantially as claimed except for various ranges in size of the guidewire port aperture, length of the angled slit. At the time the invention was made, it would have been an obvious matter

of design choice to a person of ordinary skill in the art to vary the size of various part of a component, since such a modification would have involved a mere change in the size of a component. A mere change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (1955). Furthermore, applicant has not disclosed that the above limitations provides an advantage, is used for a particular purpose, or solves a problem in the art.

Claims 5 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alchas.

Alchas discloses a single lumen catheter substantially as claimed except for an angled slit extending radially through the polymer sheath at an angle such that the slit has a depth that is greater than a thickness of the polymer sheath and substantially less than 90 degrees to the outer surface of the polymer sheath. It would have been obvious to one of ordinary skill in the art at the time the invention was made to vary the angles of the slit since Alchas teaches that, it should be understood that the slit may be oriented at various angles to the position shown (Col 6).

Claims 13-17 are rejected under 35 U.S.C. 103(a) as being Unpatentable over Yurek et al U.S. Pat. No. 5,690,644 in view of Alchas.

Yurek discloses a microcatheter comprising: an elongate shaft (20); a guidewire port (52); a control valve 53); a guidewire port (figs. 1-17); the device of Yurek is fully capable of performing the function as set forth in claim1; as to claims 6 and 7, (figs. 1-

7); as to claims 10, 12, (fig. 1-7); as to claims 13-17 (see above rejection). Yurek does not disclose for an angled slit extending radially through the polymer sheath at an angle such that the slit has a depth that is greater than a thickness of the polymer sheath and substantially less than 90 degrees to the outer surface of the polymer sheath. Alchas discloses that the slit may be oriented at various angles to the position shown (Col 6). Therefore, it would have been obvious to one having ordinary skill in the art to modify the device of Yurek with the angled slits of Alchas for inserting a guidewire.

### ***Response to Arguments***

Applicant's arguments filed 6/8/05 have been fully considered but they are not persuasive.

Simply, the Alchas discloses that when the fluid pressures are different on either side of the valve, then it will open. Which completely indicates when fluid pressures are the same on both sides then the valve will close. Therefore, each and every limitation is positively anticipated. Furthermore, configured carries very little patentable weight, which the device of Alchas is fully capable of performing all of the functions, set forth in the claim.

As to Friedman, the device Friedman is fully capable of having a guidewire into the syringe and/or any apertures as applicant has clearly indicated in his arguments.

Note: It is the examiner's position that with so much functional language, it would not be very difficult to find numerous patents that read on applicant's current claimed invention like Friedman and Alchas! Claim 1, merely requires that the control valve is configured

to allow passage of a guidewire therethrough and is configured to provide a substantially fluid tight seal when the guide wire is removed which the device of Friedman is fully capable of performing that function. For example, a guidewire could be removed from the center of the control valve (8), then the elongate shaft turned in a certain direction to tighten the valve. Therefore, Friedman's device would be fully capable of performing the function and configured to perform the function

Therefore, Friedman discloses each and every claimed element. Therefore, claim 1 is not patentable over Friedman. Claims 2-6, 10 and 12 depend from claim 1 add additional limitations and thus are similarly rejected over Friedman.

Applicant's arguments with respect to Yurek have been considered but are moot in view of the new ground(s) of rejection.

### ***Allowable Subject Matter***

Claims 18-20 are allowable over the prior art of record.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action.

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In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin C. Sirmons whose telephone number is 571-272-4965. The examiner can normally be reached on Monday-Friday 6:30-4:00 ALT FRI.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin C. Sirmons  
Primary Examiner  
Art Unit 3763  
8/22/05

